

REMARKS

Claims 1-28 and 30-48 are pending in this action. Claim 29 has been canceled.

The Examiner has rejected claims 1-28, 30, 32-41 and 45-48 under 35 U.S.C. 103(a) as obvious over U.S. Patent No. 6,374,300 issued to Masters ("Masters"), in view of U.S. Patent No. 6,772,333 issued to Brendel ("Brendel"). The Examiner also has rejected dependent claims 31 and 42-44 under 35 U.S.C. § 103(a) as obvious over Masters, in view of Brendel and further in view of U.S. Patent No. 6,453,360 issued to Muller, et al ("Muller"). The Examiner also appears to rely on Muller in the rejection of dependent claims 19 and 37. In addition, the Examiner appears to be referring to claim 48, rather than claim 47, in the detail on page 13 of the Final Office Action. Applicant has responded accordingly. Applicant respectfully traverses the Examiner's rejections.

Independent claims 1, 13, 25 and 35 recite, "independent of the application software instructions, form second information for causing a second computing device to perform an operation; in response to receiving the first information, execute protocol stack instructions to form a data portion of a packet that includes at least the first and second information" (emphasis added), or similar language. The Examiner admits that Masters does not teach, suggest, or motivate executing protocol stack instructions to form a data portion of a packet. The Examiner contends that this teaching is provided by Brendel and that it would be obvious "to modify the teachings of Masters to execute the protocol stack instructions to form a data portion of packet as taught by Brendel." (Page 3 of the Final Office Action dated June 8, 2007).

The Examiner points to the discussion of a data payload containing a special cookie in Brendel at column 8, lines 32-52. This portion of Brendel, however, does not teach, suggest or motivate executing protocol stack instructions to form a data payload regardless of whether or not the payload contains a special cookie. In Brendel, the encrypted payload, including the special cookie, is generated *by application software instructions*, not by protocol stack instructions. Brendel makes it clear that the special cookie, as well as other parts of the payload, are generated by the web-server application software, rather than by protocol stack

instructions. *See, e.g.*, Brendel, column 4, lines 1-6, column 8, lines 2-52, and column 12, lines 40-44. For example, Brendel states that a common-gateway-interface (“CGI”) script executes on the server in order to generate the server assignment cookie and the SSL session ID. Brendel, Column 12, lines 40-44. A script is generally known in the art as *application software* that allows a server (such as a web server) to pass requests from a client application (such as a web browser) to an external application. In addition, to the extent that Brendel includes an assignment cookie in a data payload, it is generated by application software, not by the HTTP protocol or the SSL protocol. Brendel nowhere discloses or suggests that the HTTP protocol or the SSL protocol generates the special cookie. Instead, Brendel states, “The server also generates assignment cookie 70 as part of the atomic operation which also generated the SSL session ID.” Brendel, Column 8, lines 32-34. Thus, as Applicant previously argued, Brendel does not teach, suggest, or motivate executing protocol stack instructions to form a data portion of a packet.

In response, the Examiner argues:

“Brendel teaches a cookie embedded in an encrypted data payload of an HTTP message (col. 8 lines 32-52). One of ordinary skill in the art will readily recognize that cookie exists at level 7 in the protocol stack. Therefore, cookie embedded in the payload is formed by the protocol stack instructions.”

(Page 14 of the Final Office Action dated June 8, 2007).

As an initial matter, the Examiner does not cite a reference for the proposition that one of skill in the art will recognize that a cookie exists at “level 7 in the protocol stack,” and Applicant respectfully requests the Examiner provide evidentiary support for this assertion. In any event, as noted above, Brendel makes it clear that the data payload, whether or not it contains a special cookie, is generated by the web-server application software, rather than by protocol stack instructions. Moreover, the existence of the special cookie as part of a data payload in a protocol stack does not mean that *protocol stack instructions were used to form the data payload*. In a layered protocol stack, an application program sends a request with a data payload to a protocol layer below the application program. The protocol layer generates an appropriate header and trailer around the data payload, as necessary. Protocol stacks do not typically generate the data portion of the protocol packet.

The Examiner also appears to be making an inherency argument without providing an evidentiary basis for the argument. Applicant respectfully traverses any such contention by the Examiner and, to the extent the Examiner continues to rely on this assertion as a basis for rejecting any of the claims, requests that the Examiner identify the portion of Brendel that discloses executing protocol stack instructions to form a data portion of a packet or provide support for any contention that executing protocol stack instructions to form a data portion of a packet is inherent in Brendel.

Accordingly, Applicant respectfully submits that independent claims 1, 13, 25, and 35 are not rendered obvious by Masters, alone or in combination with Brendel, because Masters, alone or in combination with Brendel (or Muller), does not teach, suggest or motivate executing protocol stack instructions to form a data portion of a packet. Dependent claims 2-12, 14-24, 26-28, 30-34 and 36-48, are allowable at least by virtue of the dependencies.

As noted above, the Examiner rejected dependent claims 31 and 42-44 under 35 U.S.C. § 103(a) as obvious over Masters, in view of Brendel and further in view of Muller. Applicant respectfully traverses the Examiner's rejections.

As stated in the previous responses, Muller does not teach, suggest, or motivate "executing protocol stack instructions to form a data portion of a packet." Thus, Masters, in combination with Brendel and/or Muller, does not teach, suggest, or motivate "executing protocol stack instructions to form a data portion of a packet." Accordingly, claims 31 and 42-44 (as well as claims 19 and 37) are allowable at least by virtue of their dependencies.

Although Applicant has not addressed the Examiner's additional rejections under 35 U.S.C. 103 for all of the dependent claims in the interests of expediting prosecution, Applicant hereby reserves the right to traverse and specifically argue these claims in the future.

Conclusion

Therefore, for these reasons and others, all of the pending claims are not anticipated or rendered obvious by Masters, alone or in combination with Brendel and/or Muller. Applicant notes that no claims have been amended. Applicant reserves the right to further present arguments regarding the Examiner's statements about what is taught by the cited

references at a later time, should such become necessary. Specifically, no waiver (legal, factual, or otherwise), implicit or explicit, is hereby intended.

In closing, Applicant respectfully requests the Examiner to reconsider this application and its early allowance. The Director is authorized to charge any additional fees due by way of this Response, or credit any overpayment, to our Deposit Account No. 19-1090.

Respectfully submitted,
SEED Intellectual Property Law Group PLLC

/Timothy L. Boller/

Timothy L. Boller
Registration No. 47,435

TLB:jms
Information Disclosure Statement Transmittal
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Cited References (2)

701 Fifth Avenue, Suite 5400
Seattle, Washington 98104-7092
Phone: (206) 622-4900
Fax: (206) 682-6031

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